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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

WILLIAM WEBB,

Petitioner and Respondent,

v.

DEBORAH WEBB,

Respondent and Appellant.

B262190

(Los Angeles County  
Super. Ct. No. SD030555)

APPEAL from a judgment of the Superior Court of Los Angeles County. Marc D. Gross, Judge. Affirmed.

William Webb, in pro. per., for Petitioner and Respondent.

Deborah Webb, in pro. per., for Respondent and Appellant.

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Deborah Webb (wife) appeals from the December 29, 2014 nunc pro tunc order vacating a dismissal entered by the court clerk. We affirm.

### **FACTUAL AND PROCEDURAL BACKGROUND**

Wife and respondent William Webb (husband) were married in 1997. Husband filed for legal separation in 2012. In February 2014, husband requested a trial on the issues of the date of legal separation and division of property.<sup>1</sup> Husband and wife were both represented by counsel at that two-day trial in August 2014. The minute order of August 7, 2014 states:

**“Judgment of Dissolution of Marriage is granted.**

“Marital status is terminated and the parties are restored to the status of unmarried persons upon the Entry of Judgment or the later of 2/8/15.

“Jurisdiction is reserved over all other issues and all other orders remain in full force and effect.

“Counsel is to prepare the Judgment pursuant to California Rules of Court 391 and Local Rules 13.11 and serve to the opposing party as to form and content and to the court for signature and filing.”

The trial court entered an interlocutory judgment of dissolution of marriage on October 3, 2014. The judgment also declared the family home and a \$40,000 debt to be community property and certain business entities to be husband’s separate property; issues of spousal support were reserved for future determination. Paragraph 4 of the judgment states:

“Judgment of dissolution is entered. Marital status is terminated and the parties are restored to the status of single persons:

“ (1) ☐ on (*specify date*): February 8, 2015.”

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<sup>1</sup> In April 2014, husband filed a petition for Nullity of Marriage, but later withdrew that petition and reinstated his request for legal separation or dissolution.

Nothing in the record indicates that either party did not have the opportunity to review the proposed judgment for form or content, or that either party objected to the proposed form or content of the judgment.

On December 19, 2014, four months after the trial and two months after the October 3, 2014 judgment was entered (but before it became “effective”), the parties filed a request for dismissal without prejudice of the entire action.<sup>2</sup> A clerk signed the dismissal and entered it on December 24, 2014 (the dismissal order).

Four days later, on December 29, 2014, the court issued an order vacating the previously entered dismissal order, thus reinstating the case to active status. The record does not show what prompted the nunc pro tunc order. The court does not appear to have conducted a formal hearing on December 29, as the minute order is marked “no appearances.” The minute order states:

“Due to clerical inadvertence and error, the Dismissal entered December 24, 2014. [*sic*]

“Said Dismissal is ordered vacated this date.

“Status of the case is active as of this date.

“Court’s OSC Re Entry of Judgment currently set for March 27, 2015 at 8:30 a.m. in Department CE79 is reinstated this date.”

Wife timely appealed from the December 29, 2014 nunc pro tunc order vacating the dismissal order. We affirm.

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<sup>2</sup> The request for dismissal indicates that it was husband (as petitioner below) who requested the dismissal, and that wife signed after the legend: “Consent to the above dismissal is hereby given.” The document has wife’s address in the upper left hand part, as the filing party identification. In Respondent’s Brief, husband states that wife filed the request and husband “did Not sign a stipulation to have the case dismissed.” It is unclear whether husband’s reference to a “stipulation to have the case dismissed” is to the form request for dismissal and, if so, whether he is asserting that his signature on the request was forged. The issue is not before us.

## DISCUSSION

Wife contends the trial court erred in vacating the dismissal order nunc pro tunc for two reasons. First, she argues she was denied due process because she was not given notice of a hearing on December 29, 2014, the day the trial court filed the nunc pro tunc order. Second, she argues the nunc pro tunc order does not specify “what the ‘clerical error’ was, [and] it is assumed the clerk found an error in Deborah’s [wife’s] request for dismissal. She then argues that “ ‘an error in a request for dismissal does not constitute a clerical error in the court records and thus cannot be corrected as such.’ ” Neither argument has merit.

A proceeding for dissolution of marriage is commenced by the filing of a petition. (Fam. Code, § 2330.) The issue of dissolution may be separately tried (i.e. bifurcated) from other issues, such as spousal or child support. (Fam. Code, § 2337, subd. (a).) Dismissal of Family Law cases is governed by Code of Civil Procedure section 583.161. Pursuant to that statute, when dissolution of the marriage has been bifurcated from other issues, the petition may not be dismissed after there has been a trial on the issue of dissolution. (Code Civ. Proc., § 583.161, subd. (d) (§ 583.161(d)); see *In re Marriage of Dunmore* (1996) 45 Cal.App.4th 1372, 1380.)

“ ‘A nunc pro tunc order or judgment is one entered as of a time prior to the actual entry, so that it is treated as effective at the earlier date.’ . . .” [Citation.]’ ” (*In re Marriage of Padgett* (2009) 172 Cal.App.4th 830, 852.) A nunc pro tunc order “ ‘may not be used as a vehicle to review an order for legal or judicial error by “correcting” the order in order to enter a new one.’ [Citation.]” (*Ibid.*) But a court clerk is a ministerial officer, not a judicial officer. (*Thompson v. Thames* (1997) 57 Cal.App.4th 1296, 1307.) And a nunc pro tunc order is the appropriate vehicle for correcting an improper entry of dismissal by the court clerk. (Cf. *In re Marriage of Tamraz* (1994) 24 Cal.App.4th 1740 [affirming nunc pro tunc order awarding wife spousal support entered after clerk entered dismissal of husband’s dissolution petition; one spouse cannot unilaterally dismiss petition for dissolution when the other spouse seeks affirmative relief].)

Here, the issues of dissolution and spousal support were bifurcated. The dissolution issue was tried in August 2014. Because there had been a trial of the dissolution issues, dismissal of the petition was precluded by section 583.161(d). Wife may have believed the case could be dismissed on December 24, 2014 because the dissolution of marriage was not to be effective for another six weeks, on February 8, 2015. But Code of Civil Procedure section 583.161 says otherwise, and does not carve out an exception for a dissolution that is not to be effective until a future date. The clerk, thus, had no power to enter the dismissal on December 24, 2014. Under these circumstances, the trial court properly issued a nunc pro tunc order to correct the clerk's error.

#### **DISPOSITION**

The judgment is affirmed. Each party to bear their own costs on appeal.

RUBIN, J.

WE CONCUR:

BIGELOW, P. J.

GRIMES, J.